THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

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W.P.NO.5728 OF 1996

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% 13-04-2006

Between:

C. Venkataiah,

Ananthapur District

..... Petitioner

AND

The District Collector,

Ananthapur District, and others.

.....RESPONDENTS

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! COUNSEL FOR THE PETITIONER: Sri O. Manohar Reddy

^ COUNSEL FOR THE RESPONDENTS: G.P. for Land Acquisition

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> Head Note:

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THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Writ Petition No.5728 of 1996

JUDGMENT:

This writ petition is filed assailing the action of the respondents in proposing to acquire the lands belonging to Sri Anjaneya Swamy Temple at Gotlur, Dharmavaram Mandal of Anantapur District. The petitioner states that he is an ardent devotee of the temple. According to him, there is no independent source of income, for the maintenance of the temple, and that an extent of Ac.9.45 cents in Sy.No.63, endowed to it; was being leased out after deliberations among the village elders, Trust Board members etc. He submits that the entire land belonging to the temple is sought to be acquired for the purpose of providing house sites, and no opportunity was given, either to the villagers or to the interested persons, to put forward their contentions. It is urged that the petitioner and other devotees came to know about the notifications issued under Section 4(1) and 6 of the Land Acquisition Act (for short 'the Act') on 20-02-1996, only when they were published on 24-02-1996 and 29-2-1996 respectively.

It is alleged that an extent of Ac.20.00 belonging to Sri Chenna Kesava Swamy Temple of the same village was acquired for house sites on a previous occasion, and most of the beneficiaries have not even occupied the allotted plots. It is also pleaded that the land, which is proposed to be acquired, is at a distant place and not suitable for house sites. The petitioner raises a legal contention to the effect that dispensing with the enquiry under Section 5-A of the Act, in the instant case, is illegal on account of the fact that the appropriate Government did not issue any directions as provided for under Section 17 (4) of the Act.

On behalf of the respondents, a counter affidavit is filed. It is pleaded that the land is needed for providing house sites to the poor, and invoking the powers under the relevant provisions of the Act, the impugned notifications were issued, and that there is no illegality. The contention of the petitioner that the plots, carved out of 20 acres of land, belonging to Sri Chenna Kesava Swamy Temple, were not occupied; is not specifically denied. It is stated that plots have been distributed out of the said land. The allegation of the petitioner that the land proposed to be acquired is situated at a distance of 2 K.Ms.; is admitted. However, the contention that it is not suitable for house sites is denied. It is stated that the object in filing the writ petition is to protect the existing tenant. The respondents raised an objection as to the locus *standi* of the petitioner.

Sri O.Manohar Reddy, learned counsel for the petitioner submits that his client is very much interested in protecting the properties of the temple, and it cannot be said that he does not have the locus *standi.* He contends that the respondents have chosen the lands belonging to one temple or the other and thereby, they are trying to deprive the temples of their source of income. Learned counsel emphasizes that dispensing with the enquiry under Section 5-A of the Act is the only opportunity provided to the effected parties, in the matter of compulsory acquisition of lands, and the same cannot be dispensed with, mechanically. He contends that Section 17(4) of the Act enables dispensing with the enquiry under Section 5-A, only when it is so directed by the appropriate Government, and that such a direction was not at all issued in the instant case.

Learned Government Pleader for Land Acquisition submits that the procedure prescribed under the Act has been strictly followed, in the instant case. He pleads that the Land Acquisition Act, as amended by the A.P. State Legislature, empowers the

1st respondent, to dispense with the enquiry under Section 5-A. He contends that the discretion exercised by the respondents, in selecting the land; is not subject to judicial scrutiny.

Strong objection is raised on behalf of the respondents as to the locus *standi* of the petitioner to file the writ petition. Even while admitting the writ petition, this Court pointed out that the person-in-charge of the temple, being an employee, cannot be expected to raise any objection for the acquisition, and having regard to the nature of

interests involved, in cannot be said that the petitioner does not have locus *standi.* Much water has flown, ever since the writ petition was admitted ten years ago. The concept of
locus *standi* has almost become otiose, particularly when the person does not claim any interest or relief for himself. Therefore, the objection raised on behalf of the respondents is overruled.

The contentions advanced on behalf of the petitioner are twofold: the first is in relation to the legality of the proceedings, and the second is about propriety. It was specifically pleaded in paragraphs 5, 6 and 7 of the affidavit, filed in support of the writ petition, that sub-section (4) of Section 17 of the Act empowers only the appropriate Government to direct, that the provisions of Section 5-A of the Act shall not apply, and it is only when such directions are issued, that a declaration under Section 6 can be published at any time, after the publication, under Section 4(1), without conducting enquiry under Section 5-A of the Act. The petitioner pleaded that the appropriate Government did not issue any direction in the instant case. This statement of the petitioner was not denied by the respondents in their counter affidavit. Therefore, the contention of the petitioner remains unrebutted.

It needs to be borne in mind that compulsory acquisition of lands results in curtailment of right of citizens, to own, possess and enjoy the properties, and such curtailment can be brought about only after strict compliance with the relevant provisions. Further, it is settled principle, that, where the law requires a particular thing to be done in a particular manner, it shall be done in that manner, or not at all. The Government or the concerned authority does not have the prerogative to ignore or short-circuit the prescribed procedure.

When the Legislature has prescribed a particular procedure, in the context of denying the only protection of a citizen to make a representation, the 1st respondent cannot be permitted to ignore the same, and act according to his whims. The A.P. State Legislature amended sub-section (2) of Section 17, enabling the Government to invoke urgency clause, whenever any land is proposed to be acquired, for the purposes indicated therein.
The provision does not suggest that the District Collector or the appropriate Government must invariably dispense with the enquiry under Section 5-A, while acquiring the lands for the purposes indicated therein. The urgency, in its true sense

and spirit; must exist. For instance, where the proposal for acquiring the land was pending for years together, the urgency cannot be felt, only in the matter of maintaining a gap of 30 days, between the notification, under Section 4(1), on the one hand, and the one, under Section 6, on the other hand, for the purpose of conducting enquiry under Section 5-A. The insistence, under Section 17 (4), by the Legislature, that urgency clause can be invoked only when directed by the appropriate Government, has its own significance, and is a protection against indiscriminate invocation of urgency clause. Therefore, the action of the respondents in dispensing with the enquiry under Section 5-A, without there being a direction by the appropriate Government, as provided for under Section 17(4) of the Act; cannot be sustained in law.

Coming to the contention, touching on propriety, this Court is compelled to observe that the lands that were endowed to temples by the ardent devotees several decades and centuries ago, have unfortunately become soft targets, equally for land encroachers and the Government. In a way, it can be said that the tendency points to the decline in moral values in the society. Instead of discouraging such tendencies, the Government is encouraging them. If any proof is required, the present case provides for one.

It was categorically pleaded that an extent of 20 acres of land, belonging to Sri Chenna Kesava Swamy Temple was acquired for the purpose of house sites, and that several plots allotted to the beneficiaries remained unoccupied. This allegation is not controverted. It was also pleaded by the petitioner that the land of Sri Anjaneya Swamy Temple, which is sought to be acquired, is at a distance of 2 K.Ms. away from the village and the respondents admitted this. Had the respondents been interested in the welfare of the citizens and in providing house sites to the poor, they could have acquired the lands abutting the village. They were confident that there would be none, to oppose the acquisition of lands, belonging to temples, whether they are fit for house sites or not.
No other reason is either pleaded by them or appears to be evident.

It was with a specific purpose that the lands were endowed to the temples by the generous people. For several centuries, our country had a principle in law of war to the effect that in the event of an invasion also, the priests and properties endowed to places of worship must not be touched. That is how, the properties of Temples remained intact event after the country was subjected to foreign invasions. Instances

are not lacking where, the invaders have rendered services also. The survey and construction of the 1st ghat road to Thirumala stands as an example. After independence, governments as well as the native people have acquired courage and strength to occupy or plunder such properties.

The lands endowed to Religious Institutions will generate periodical income, or, at least, would remain as assets. Once they are converted into liquid cash, the amount would be spent away, if not immediately, in the near future, and the very purpose of endowing the property would be defeated. Some of the officials of the Endowments Department have also exhibited complacency in the matter. In most of the cases encroachments are taking place
on account of the indifference exhibited by the concerned authorities, and acquisition is projected as a better alternative. Such an approach was never contemplated when the religious institutions were brought under the control of the Government. Therefore, this Court finds that the respondents lacked propriety, in choosing the lands of the temples alone, for the purpose of providing house sites even after it was found to be located far away from the village.

Once it is held that the dispensing with the enquiry under Section 5-A of the Act was contrary to Section 17(4) of the Act, the notification issued under Section 6 must be set aside. Then remains the question, as to whether it would be permissible for the 1st respondent to issue fresh notification under Section 6, on the basis of the notification issued under Section 4(1) of the Act.

In W.P.No.15717 of 1998, this Court held that in view of the judgments rendered by the Supreme Court, it is impermissible to issue a fresh declaration under Section 6, beyond one year, once such a notification is set aside.

For the foregoing reasons, the writ petition is allowed as prayed for. It is further directed that the respondents shall be entitled to initiate fresh proceedings, in respect of the land in question, only after a clear finding is recorded to the effect that, no other land in the locality or vicinity is available for acquisition, and after obtaining necessary approval from the Government in the revenue department and the Commissioner of Endowments. They in turn, shall ascertain the views of the Trust Board of the Temple and other persons concerning it, before taking any decision in

this regard.

An averment was made in the counter affidavit to the effect that the present writ petition is filed only at the instance of an existing lessee. In view of such a contention, it is directed that the leasehold rights of the land shall be put to auction every year, and the amount so secured, shall be deposited to the account of the temple.

There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt. 13-04-2006

Note:

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